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CASE & COMMENT

MONTHLY

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THE LAWYERS' CO-OPERATIVE PUBLISHING CO.

ROCHESTER, N. Y.

Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 12. JUNE, 1905. No. 1.

CASE AND COMMENT

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Unfair Prosecutors.

The notorious trials of Nan Patterson have not only filled the newspapers with a flood of sensational stuff, but have divided the public press into factions with respect to the merits of the case. A somewhat general disposition has been apparent to attack Mr Rand, the prosecuting attorney in the case, for unfairness and abuse of the defendant. It is, of course, somewhat too common for public prosecutors to become so zealous in the work of prosecution as to forget that their duty is, not to secure a conviction at all hazards, but to secure justice. But the attacks by the newspapers on Mr. Rand seem to have been unfair. From an examination of what are called the severest passages in his speeches the editor of the "New York Law Journal" reaches the conclusion that he did not indulge in passionate vituperation, but, on the contrary, was as moderate in utterance as a public prosecutor could reasonably be expected to be, and that he appealed to the reason and conscience, and not to the prejudices, of the jury. So much notoriety has been given to the case, and such bitter attacks have been made upon the prosecuting attorney, that it seems just to give this testimony in his favor. While prosecutors sometimes go to excess in their zeal, newspaper attacks upon a prosecutor in any case where sympathy can easily be enlisted for the defendant are far more likely to be unreasonable and intemperate.

The failure of the jury to convict the defendant in this case was to be expected. The conviction of a woman, and especially so young a woman, on a charge of killing a man under such circumstances, would be very remarkable. While few people justify homicide in such case, many regard it very leniently. Sympathy for the accused in every such instance will be strong, every doubt will be solved in her favor, and some people will say she served him right. Under such circumstances, therefore, the duty of the prosecutor is an unpleasant and difficult one. If he does only what justice requires him to do, those whom sympathy has turned into partisans of the defendant will doubtless think him vindictive.

Ownership of Property in Case of Robbery.

The common-law definition of robbery as the felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence or putting him in fear, leaves open the ques

tion whether the person from whom the property is taken must be the owner of it. On the part of the defendant, it has often been claimed in such cases that the offense was not committed because the property was taken from someone other than the owner. In State *v.* Montgomery, 181 Mo. 19, 67 L. R. A. 343, 79 S. W. 693, the robbery of a clerk by compelling him to take money from a cash drawer was held to sustain a conviction, though the clerk had no personal interest in the money. This case is clearly sustained by the authorities on the subject, which have been reviewed in the annotation of the case in 67 L. R. A. 343. The contention to the contrary is clearly one of those technicalities of strict construction which have sometimes found lodgment in the criminal law. To sustain it would be manifestly against the reason of the law, and constitute an obstruction to justice. In some cases it has been held that the interest of the person robbed must be such as would entitle him to maintain an action for the property if taken out of his custody, but these cases, which were decided in Missouri, are overruled by the Montgomery Case, and it seems to be now universally true that the ownership of the property by the person robbed is not an essential element in the crime.

The Right of Privacy Declared.

The ablest discussion yet made by any of the courts on the vexed question of the law of privacy is to be found in the opinion of Cobb, J., speaking for the supreme court of Georgia in the case of Pavesich *v.* New England L. Ins. Co. 50 S. E. 68. In an elaborate review of the principles of the Roman law, as well as of the common law, the court clearly and sharply declares that a right of privacy is sustained by the fundamental principles of the law.

The court says: "The right of privacy has its foundation in the instincts of nature. It is recognized intuitively, consciousness being the witness that can be called to establish its existence. Any person whose intellect is in a normal condition recognizes at once that, as to each individual member of society, there are matters private, and there are matters public, so far as the individual is concerned. Each individual as instinctively resents any encroachment by the public upon his rights which are of a private nature as he does the withdrawal of those of his rights which are of a public nature. A right of privacy in matters purely private is therefore derived from natural law."

"The *injuria* of the Roman law, sometimes translated 'injury' and at other times 'outrage,' and which," says the court, "is generally understood at this time to convey the idea of legal wrong, . . . was committed, not only by striking with the fists or with the club or lash, but also by shouting until a crowd gathered around one, and it was an outrage or legal wrong to merely follow an honest woman or young boy or girl; and it was declared in unequivocal terms that these illustrations were not exhaustive, but that an injury or legal wrong was committed 'by numberless other acts.' Sandar, Just. Hammond's ed. 499; Poste, Inst. of Gaius, 3d ed. 449. The punishment of one who had not committed any assault upon another, or impeded in any way his right of locomotion, but who merely attracted public attention to the other as he was passing along a public highway or standing upon his private grounds, evidences the fact that the ancient law recognized that a person had a legal right 'to be let alone,' so long as he was not interfering with the rights of other individuals or of the public."

At common law the court finds instances of the protection of this right of privacy. The right of liberty is said to include a right to seclusion at one's option when his presence in public is not demanded by any rule of law. So the law of private nuisances is said to recognize the right of a person to quiet in his home as against noise which interferes with his enjoyment there, even though the noise results from carrying on a lawful occupation. Again, the common-law maxim that "every man's house is his castle" was interpreted in Semayne's Case, 5 Coke, 91, 1 Smith, Lead. Cas. 9th ed. 228, to mean not only for his defense against injury and violence, but "for his repose." The doctrine that eavesdroppers listening under walls or windows or the eaves of a house were a nuisance at common law and indictable, and might be required to give sureties for their good behavior, is cited as a recognition of this right to the privacy of home. The same is said, though with less pertinency, as to the doctrine that a

common scold could be indicted as a public nuisance. So the constitutional right to be secure against unreasonable searches and seizures, being also an ancient right antedating the constitutions, is declared to be an implied recognition of the existence of a right of privacy. While it is possible to base some, at least, of these doctrines of the common law on the theory that rights of property are thereby protected, it is clear that in some of them, at least, as in the case of eavesdroppers, the real right to be protected was a personal one, whether called a right of privacy or not. This right to be secure and undisturbed in one's home against process servers and searches by officers is also very clearly for the protection of the person, rather than of property. The court reviews a series of cases in which what it regards as a right of privacy was actually protected, though nominally on other grounds, such as an alleged invasion of property rights. It is beyond question that the real right in many such cases was one of person, rather than of property. The property right involved in such cases is a fiction which the courts have adopted to avoid the miscarriage of justice which would result from applying the ancient rule that would limit the jurisdiction of equity to the protection of property rights. How far the courts have actually abandoned that rule in reality, though professedly adhering to it, is shown in a note in 37 L. R. A. 783. But the personal rights involved in such cases, whether called rights of privacy or otherwise, are usually rights which involve the protection of personal comfort, or of reputation and standing.

The actual decision in this Georgia case is much narrower than the range of the discussion. The justice of the decision is unquestionable. The law would richly deserve Mr. Bumble's characterization if it did not protect a person against such wrongs as that for which this action was brought. The plaintiff was impudently and insolently, and, as the court found, maliciously, misrepresented by the unauthorized publication of his portrait, together with false statements made as coming from him, with respect to his having carried life insurance in the defendant company. This portrait and these statements were published as a contrast to a companion portrait of an illy dressed, sickly looking person, who was represented as bemoaning his own failure to take such insurance. All this was for advertising purposes, and the statements about the plaintiff were utterly untrue. The publication was humiliating to the plaintiff, and tended to hold him up to ridicule. It was plainly an injury to his personal rights. The fundamental principles of the law of libel certainly covered the case, and the court upheld a count of the petition for libel against demurrer, as well as the other count for invasion of a right of privacy. The only uncertainty about the case, therefore, is whether the wrong should be called an injury to a right of privacy, or an injury to reputation. It was an outrage on the plaintiff which the law should punish in one form or another. As heretofore contended in these columns, it seems unnecessary and illogical to call the right invaded in such case a right of privacy, rather than a right to reputation in the broad sense, since mere publicity affecting the person only is not held by any of the courts to constitute an invasion of any right, except when the publicity is of a kind to injure or degrade the reputation or standing of the person among his friends or the public at large. If, therefore, it is the injury to his reputation or standing which gives the right of action, the case seems to belong to the general class of actions for defamation, even though its decision may need to go somewhat beyond the technical limits of the rules usually applied in that kind of actions. Publicity of itself has never been, and it is not conceivable that it ever will be, held to invade any right of a person, except when the publicity is of a kind or under circumstances that will injure the reputation, standing, physical comfort, or other well-recognized personal right. If a right of privacy *eo nomine* is to be upheld, it is certain to be limited to the protection of some other personal right than the mere right to an exemption from publicity as such. It is, however, of infinitely more importance that such wrongs as those for which this Georgia action was brought should be prevented or punished, than that the right word should be used in defining the right invaded, since there can be little danger that, if this right is called a right of privacy, the courts will ever extend it beyond the protection of real wrongs. The actual danger is, as in the Roberson Case in New York (171 N. Y. 538, 59 L. R. A. 478,

89 Am. St. Rep. 828, 64 N. E. 442), that an outrage upon personal rights shall go unpunished on a mistaken theory that there is no rule of law that covers the case.

Aliens Carrying Weapons.

By the amendment to § 410 of the New York Penal Code, it is provided that "no person, not a citizen of the United States, shall have or carry firearms or dangerous weapons in any public place at any time." The reason of this provision is obvious. Among the immigrants of recent years there have been many whose temperament and habits have made them a dangerous element. Homicides by them have been numerous. In their frequent quarrels weapons have been always ready and swiftly drawn into use. If they are not allowed to carry arms or dangerous weapons in any public place, the list of homicides charged to them will be much decreased. The section expressly exempts parades by duly authorized military or civil organizations. This discrimination between citizens and aliens, though somewhat novel, is fully justified. The same section, however, makes it a misdemeanor for a citizen to carry any concealed weapon in any city or village without a written license. But to an alien no such license can be given.

Unlawful Weapons and Toys for Children.

An amendment to the New York Penal Code, §§ 409 and 410, goes far to prevent the disasters which in recent years have resulted, especially on the Fourth of July, from the use of dangerous toys and weapons by children. It makes it a misdemeanor to offer, sell, loan, lease, or give any gun, revolver, pistol, or other firearm, or any air gun, spring gun, or toy pistol, or instrument, or weapon, in which loaded or blank cartridges can be used, or any such cartridges or ammunition therefor, to any person under the age of sixteen years. It also makes it a misdemeanor for any person under that age to carry, or have in possession, in any public place any such article. A proper enforcement of this statute will save the lives and limbs of many who would otherwise be victims of these dangerous weapons. In this matter New York takes a step which ought to be taken in every state. The annual slaughter on the Fourth of July has in recent years become appalling. The toy pistol, especially, is credited with a large number of deaths by lockjaw. The easy-going indifference of the American public to disasters or wrongs of any kind that result from anything that is called sport, however misdirected or wanton, has been, and still is, greatly to our discredit. This statute furnishes one instance, at least, of improvement in this particular.

Index to New Notes IN LAWYERS' REPORTS, ANNOTATED.

Book 67, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Among the New Decisions.

Animals.

See STREET RAILWAYS.

Arrest.

See MASTER AND SERVANT.

Assault.

To excuse a person for assaulting another under the belief that he is a third person, upon whom an assault would be justified, it is held, in Crabtree *v.* Dawson (Ky.) 67 L. R. A. 565, that he must exercise the highest degree of care practicable under the circumstances to ascertain whether or not the person whom he is about to strike is in fact the one whom he believes him to be.

Attachment.

See CHECKS; CORPORATIONS.

Carriers.

See also CONFLICT OF LAWS.

The right of a carrier to limit, by special contract, his common-law liability, and thereby to exempt himself from liability for any loss resulting otherwise than by the negligence or misfeasance of himself or his servants, is sustained in Russell *v.* Erie R. Co. (N. J. Err. & App.) 67 L. R. A. 433.

Delay by the initial carrier in the transportation of goods at a season when weather conditions would naturally produce deterioration in their quality, which may have aided in causing the damaged condition in which they were delivered to the consignee, is held, in St. Louis, I. M. & S. R. Co. *v.* Coolidge (Ark.) 67 L. R. A. 555, to render it liable for the loss, unless it shows that its delay did not produce the injury in whole or in part, although delay by a connecting carrier is also shown, which might have caused, or contributed to, the injury.

The law of negligence governing the standing on a platform of a moving street car in a municipality is held, in Cincinnati, L. & A. Electric Street R. Co. *v.* Lohe (Ohio) 67 L. R. A. 637, not to be applicable to the case of standing on such platform of a moving interurban car in the open country; but the rule governing such a case is held to be the same as that in the case of steam cars.

Papers pertaining to the business of an insurance agent, and belonging to his employer, are held, in Yazoo & M. Valley R. Co. *v.* Blackmar (Miss.) 67 L. R. A. 646, not to be baggage; and, therefore, it is held that, in case they are placed in a trunk which is checked as baggage, an action cannot be maintained for the benefit of the employer for loss caused by delay in their transportation.

Checks.

A check on an open bank account is held, in Love *v.* Ardmore Stock Exchange (Ind. Terr.) 67 L. R. A. 617, not to constitute an assignment of the fund, or take precedence of a subsequent attachment levied on the fund before the check is presented for payment or brought to the notice of the bank, if such presentment is not made, or notice given, within a reasonable time.

Conflict of Laws.

In case of a breach of a carriage contract in a state whose Constitution prohibits the carrier from contracting to limit its common-law liability, it is held, in Adams Express Co. *v.* Walker (Ky.) 67 L. R. A. 412, that the carrier cannot, in the courts of that state, have the benefit of a contract

valid where made in another state limiting such liability.

Conveyance.

A parol gift of a note is held, in Vann *v.* Edwards (N. C.) 67 L. R. A. 461, not to be within the meaning of a constitutional provision requiring a man's written consent to make valid his wife's conveyance of her property, since the word "conveyance" has reference to the transfer of such property as must be transferred by written instruments.

Corporation.

A written transfer of a certificate of shares of stock in a corporation, made in good faith and for value, and possession taken thereof as a pledge for the payment of a private debt of the assignor, is held, in Mapleton Bank *v.* Standrod (Idaho) 67 L. R. A. 656, to have preference over a subsequent attachment thereof in favor of a creditor of the assignor, although the transfer was not entered on the proper books of the corporation.

An unregistered transfer of shares of corporation stock, for which no certificate has been issued, if made for a valuable consideration and without fraud, is held, in Lipscomb *v.* Condon (W. Va.) 67 L. R. A. 670, to vest in the transferee a title to the shares superior to the claims of a subsequent attaching creditor of the transferrer.

Electrical Uses.

A corporation which contracts to light a building by electricity is held, in Alexander *v.* Nanticoke Light Co. (Pa.) 67 L. R. A. 475, to undertake thereby to protect its occupants from injury by the electrical current, so far as it can do so by exercising the highest degree of care, skill, and diligence in the construction and maintenance of its plant.

Estoppel.

A widow who offers for probate, and undertakes to carry out as administratrix with the will annexed, the will of her husband, which devises to her her own land for life with remainder to their children, and an additional sum of money, is held, in Tripp *v.* Nobles (N. C.) 67 L. R. A. 449, to be estopped to assert her absolute title to the real estate.

Fixtures.

Machinery and other appliances necessary for the prosecution of the work, placed on land by a lessee under a lease for oil and gas purposes by which it is agreed that he shall have the privilege at any time to remove therefrom all machinery and fixtures placed thereon, are held, in Gartlan *v.* Hickman (W. Va.) 67 L. R. A. 694, not to become parts of the freehold, and to be removable by the lessee within a reasonable time after the forfeiture of the lease because of nonpayment of the rental.

Fraud.

See JUDGMENT.

Gift.

See CONVEYANCE.

Habeas Corpus.

The sufficiency of the evidence before a grand jury to warrant an indictment is held, in *Re* Kennedy (Cal.) 67 L. R. A. 406, not to be subject to inquiry on habeas corpus proceedings to obtain the release of accused from custody consequent upon the indictment, although by statute the evidence offered before the grand jury may be taken down and a copy of it delivered to the accused, so that the proceedings before that body are no longer incapable of proof.

Homicide.

Where it appeared on the trial for murder that the victim was shot and wounded by one person using a shotgun and another using a pistol, and that one of the wounds inflicted by the pistol was certainly mortal, and that probably one or more of the wounds inflicted by the shotgun were so, it is held, in Walker *v.* State (Ga.) 67 L. R. A. 426, that, in order to convict the person using the shotgun of murder in such a case, the evidence must be such as to authorize

the jury to find that death actually ensued as the result of the act of the defendant on trial, in the absence of any conspiracy between the parties doing the shooting.

The right of a man to champion the cause of a woman with whom he is maintaining improper relations, and to defend her against the simple assaults of her brother, so as to give him the benefit of the rule as to self-defense in case he kills the brother during the altercation, is denied in Morrison *v.* Com. (Ky.) 67 L. R. A. 529.

Husband and Wife.

See also CONVEYANCE.

The right of the state to place on the stand the wife of one on trial for a crime, and ask her questions as to the commission of the crime, for the purpose of forcing defendant to object to her testimony against him in order to prejudice his case, by supporting the theory that he married her to suppress her testimony under a statute making her incompetent to testify against him, is denied in Moore *v.* State (Tex. Crim. App.) 67 L. R. A. 499.

Infants.

See INTOXICATING LIQUORS.

Insurance.

See also RAILROADS.

A policy of insurance on the furniture of a house is held, in Dow *v.* National Ins. Co. (R. I.) 67 L. R. A. 479, to be void *in toto* if a large part of the furniture has been purchased on the instalment plan and is not paid for, and the policy provides that it shall be void if the interest of the insured is other than unconditional and sole ownership.

A statute requiring an insurer to fix the insurable value of the property insured, and to state such value in the policy, the measure of damages in case of total loss to be the amount so fixed, and in case of partial loss such proportion of the amount upon which premiums are paid as the damage sustained is of the insurable value as fixed by the agent; and providing that the insurer shall be estopped to deny that the property insured was worth at the time of insuring the amount so fixed, and that the agent soliciting the insurance shall be held to be the agent of the insured,—is held, in Hartford F. Ins. Co. *v.* Redding (Fla.) 67 L. R. A. 518, to be valid.

Where a policy of insurance for $2,500 on two buildings contained a clause providing that the entire policy, unless otherwise provided by agreement indorsed thereon, should be void if the insured had, or should thereafter procure, any other contract of insurance on the property; and attached to the policy was a slip of the same date as the policy, containing a description of the property insured with the amount of insurance written thereon, and a clause that 2,500 total concurrent insurance was permitted,—it is held, in L'Engle *v.* Scottish Union & N. Ins. Co. (Fla.) 67 L. R. A. 581, that the last clause, construed in connection with the language of the entire policy, permitted other concurrent insurance not to exceed $2,500.

A Pott's fracture consisting of the breaking of one bone of the lower leg between the knee and ankle joints, and a severance of the malleolus process of the other one so as to effect a complete solution of the continuity of both bones, is held, in Peterson *v.* Modern Brotherhood of America (Iowa) 67 L. R. A. 631, not to be covered by a policy providing for indemnity in case of the breaking of the shafts of both bones between the knee and ankle joints.

That a creditor has an insurable interest in the life of his debtor is held in Gordon *v.* Ware Nat. Bank (C. C. A. 8th C.) 67 L. R. A. 550; and the issue or pledge of a policy upon his life as collateral security for the payment of his debt is held to be valid.

Interurban Railroads.

See CARRIERS.

Intoxicating Liquors.

Furnishing liquor to a minor as an act of hospitality in one's home is held, in People *v.* Bird (Mich.) 67 L. R. A. 424, not to be a violation of a provision making it unlawful for any person to give such liquor to a minor, which is embraced within a statute the title to which states that it is to provide for the taxation and regulation of the business of selling, furnishing, and giving liquors.

Conferring upon a municipal corporation power to require licenses for the sale of intoxicating liquors within 4 miles of its corporate limits is held, in Jourdan *v.* Evansville (Ind.) 67 L. R. A. 613, not to deprive citizens of their constitutional property rights, or of the privileges and immunities protected by the Federal Constitution.

Judgment.

An alleged fraudulent grantee is held, in Schmitt *v.* Dahl (Minn.) 67 L. R. A. 590, to be estopped from setting up, in an action by a judgment creditor to set aside the conveyance as fraudulent, any defense that might have been interposed by his grantor in the original action. An elaborate note to this case reviews the other authorities on attack by alleged fraudulent grantee on judgment on which action to set aside his conveyance is based.

Liens.

Explosives consumed in grading a roadbed or driving a tunnel for a railroad company are held, in Hercules Powder Co. *v.* Knoxville, L. & J. R. Co. (Tenn.) 67 L. R. A. 487, to be within the provisions of a statute giving a lien to contractors and material men for materials "furnished for grading the roadbed, constructing culverts, laying tracks, or erecting buildings."

Limitation of Actions.

A right fully matured under existing law, to defeat a debt by a plea of the statute of limitations, is held, in Orman *v.* Van Arsdell (N. M.) 67 L. R. A. 438, to be neither a vested right nor a property right, and to be subject to be taken away at the will of the legislature.

A period of three months within which to bring an action upon a judgment rendered in another state, against a bona fide resident of the state establishing such period, upon a cause of action which accrued more than six years before the action upon the judgment is brought, is held, in Lamb *v.* Powder River Live Stock Co. (C. C. A. 8th C.) 67 L. R. A. 558, to be unreasonably short, and to render the statute providing it invalid.

Master and Servant.

The appointment of one as cashier of a railway station, with power to collect money, give receipts, sell tickets, take care of the money received, and forward it to the treasurer of the company, is held, in Daniel *v.* Atlantic Coast Line R. Co. (N. C.) 67 L. R. A. 455, not to empower him to arrest persons whom he suspects of having stolen money which has come into his possession, so as to render the railroad company liable in case he causes the arrest of an innocent person.

Persons engaged in the service of a master, who are intrusted by him with the management or direction of his general work, or with some particular part thereof, are held, in Johnson *v.* Union Pacific Coal Co. (Utah) 67 L. R. A. 506, not to be fellow servants with subordinate employees, but vice principals, for whose negligence, resulting in the injury of employees, the master is liable.

One into whose service another volunteers without his assent, express or implied, is held, in Atlanta & W. P. R. Co. *v.* West (Ga.) 67 L. R. A. 701, not to be under the duties of a master toward a servant or required to anticipate or discover the peril of such volunteer, but only to be bound to use care not to injure him after notice of his peril.

Municipal Corporations.

A provision in a contract for a municipal improvement that the contractor shall receive assessment certificates against the abutting property in full compensation for his labor, without recourse to the municipality, is held, in Iowa Pipe & Tile Co. *v.* Callanan (Iowa) 67 L. R. A. 408, not to relieve the city from liability in case it makes an assessment which is invalid and unenforceable.

Option.

An agreement without consideration, giving an option to purchase real estate, is held, in Frank *v.* Stratford-Handcock (Wyo.) 67 L. R. A. 571, to be revocable at any time before it is accepted; and a revocation is held to be effected by a sale and conveyance of the property to a stranger.

Public Improvements.

See MUNICIPAL CORPORATIONS.

Railroads.

A clause in a statute making a railroad company liable for losses by fire set out by its engines, which gives it the benefit of any insurance on the property, is held, in Dyer *v.* Maine C. R. Co. (Me.) 67 L. R. A. 416, to apply only to cases where the liability is imposed by the statute, and not to those where it is liable because of its own negligence.

Injury to a boy from a torpedo which he picks up near a railroad track is held, in Obertoni *v.* Boston & M. Railroad (Mass.) 67 L. R. A. 422, not to make the company liable merely upon evidence that a brakeman tossed it to a flagman, who threw it back, and, upon the brakeman's failure to catch it, and letting it fall to the ground, no attempt was made to recover and remove it to a safe place.

Real Property.

A fee in the first taker is held, in Brown *v.* Brown (Iowa) 67 L. R. A. 629, not to be created by the rule in Shelley's Case by a conveyance to one for her natural life with provisions for forfeiture in case of attempt to encumber, or nonpayment of taxes, "and at her death to her children or to their lineal descendants;" and it is held to be immaterial that, under the forfeiture clause, in case of compliance with the conditions the land was to pass to the lineal descendants of the life tenant.

Remittitur.

The power of an appellate court to require a remittitur of excessive damages, instead of reversing the judgment, and to affirm the judgment for the smaller amount in case the plaintiff assents to it, is sustained in Alabama G. S. R. Co. *v.* Roberts (Tenn.) 67 L. R. A. 495.

Street Railways.

A street railway company is held, in Moore *v.* Charlotte Electric R. L. & P. Co. (N. C.) 67 L. R. A. 470, not to be liable in damages for the killing of a dog by one of its cars, unless the killing is done wilfully, wantonly, or recklessly.

Taxes.

Opportunity for contesting, in the ordinary course of justice, a charge imposed upon property where cigarettes are sold, is held, in Hodge *v.* Muscatine County (Iowa) 67 L. R. A. 624, to be sufficient to uphold the tax as against the owner of the property, without notice to him of its assessment, although he may not be directly engaged in the business.

Change of the stated price in a telegram intended to notify a purchaser of the market price of mules, so as apparently to quote them at $10 a head less than their market price, which results in the sendee's directing the purchase of a certain number on his account, is held, in Hays *v.* Western U. Teleg. Co. (S. C.) 67 L. R. A. 481, to render the telegraph company liable for the difference in the price paid and that stated in the telegram as delivered.

Voters and Elections.

A statute prohibiting the printing of the name of a candidate for office in more than one column of the official ballot is held, in State *ex rel.* Fisk *v.* Porter (N. D.) 67 L. R. A. 473, to be, as to the candidate who is the nominee of a single political party and the nominee of electors by petition, a reasonable regulation of the manner of exercising the right of suffrage.

Waters.

Maintenance for nearly fifty years, with the knowledge and acquiescence of the canal commissioners, of flumes to take water from a canal feeder, under a contract by which the commissioners granted the right to take it, the bottoms of which are level with the bottom of the feeder, so that whenever the grantee was entitled to take water he would receive it under a head, is held, in Merrifield *v.* Canal Comrs. (Ill.) 67 L. R. A. 369, to be a practical construction of the rights of the parties which will prevent the commissioners from subsequently placing weirs

in the flumes so that no water can be received until it has reached a certain height in the feeder.

The owner of lands through which a natural water course flows is held, in Baldwin *v.* Ohio Twp. (Kan.) 67 L. R. A. 642, to have the right to accumulate surface waters falling upon lands adjacent thereto, and cast the same into such stream, without becoming liable to a lower riparian owner for damages, so long as the natural capacity of the stream is not exceeded.

Wills.

See also ESTOPPEL.

Under a will giving real estate to testator's wife for life, and providing that at the expiration of the life estate "that which is given to her for life shall be equally divided between all my children, share and share alike, the representatives of such as may have died to stand in the place of their ancestors," it is held, in Bowen *v.* Hackney (N. C.) 67 L. R. A. 440, that no estate vests in the children until the widow's death, and that, therefore, a child dying before the widow has no interest which will pass by its will.

A clause in a will forbidding the sale of testator's real estate during the lifetime of the life tenant is held, in Wood *v.* Fleetwood (N. C.) 67 L. R. A. 444, to be void as against public policy.

That a will may pass title to after-acquired real estate under a statute providing that every person may, by last will, devise "all his estate, real, personal, and mixed," is decided in Mueller *v.* Buenger (Mo.) 67 L. R. A. 648.

Witnesses.

See HUSBAND AND WIFE.

New Books.

"Alabama Justices' Practice." By A. Leo Oberdorfer. 1 Vol. $5.

"How to Settle an Estate in Ohio." By Judge Hiram B. Swartz. $1.50.

"Annotations on Tennessee Decisions." With Table of Cases and Citations. By Robert T. Shannon. Vol. 1. $8 net.

"New York Surrogates' Reports." Annotated. By Willard S. Gibbons. $5.50 per Vol.

"Burdick on Torts." 1 Vol. Canvas, $3. Sheep, $3.50.

Recent Articles in Law Journals and Reviews.

"Of the Historical Development of the Law."—38 American Law Review, 801.

"The Harter Act."—38 American Law Review, 843.

"Alaskan Boundary Case."—38 American Law Review, 866.

"The Old Law of Real Property as Modified in This Country."—39 American Law Review, 1.

"The New Patent Law of Mexico."—39 American Law Review, 32.

"The Right of Privacy, and Its Relation to the Law of Libel."—39 American Law Review, 37.

"The Act of Congress Permitting Suits against Federal Receivers — Injunctions from State Courts."—39 American Law Review, 59.

"Marriage Brokerage Contracts." — 60 Central Law Journal, 361.

"Some Changes Effected by the Negotiable Instruments Law in Missouri."—60 Central Law Journal, 363.

"Sale of Intoxicating Liquor during Closing Hours."—69 Justice of the Peace, 206.

"Agency by Estoppel."—5 Columbia Law Review, 354.

"Recovery of Money Paid under Mistake of Law."—5 Columbia Law Review, 366.

"Trade Secrets."—14 Yale Law Journal, 374.

"Contingent Future Interests after a Particular Estate of Freehold."—21 Law Quarterly Review, 118.

"The Philippines."—25 Law Register, 260, 278, 305, 338, 368.

"Liability of Water Companies for Fire Losses—Another View."—3 Michigan Law Review, 501.

"The Examination of the Medical Expert."—3 Michigan Law Review, 520.

"Marriage and Divorce in State and Church."—3 Michigan Law Review, 541.

"The Basis of Affirmative Obligations in the Law of Tort, Part II."—53 American Law Register, 273.

"Removal of Trade Fixtures—Extension of Lease."—53 American Law Register, 325.

"The Law of Bank Checks—Practical Series."—22 Banking Law Journal, 223.

"The Office of President of the United States."—67 Albany Law Journal, 111.

"Distribution of Assets of Bankrupt Partnerships and Partners."—18 Harvard Law Review, 495.

"The Plaintiff's Illegal Act as a Defense in Actions of Tort."—18 Harvard Law Review, 505.

"Ancillary Receiverships in Bankruptcy."—18 Harvard Law Review, 519.

"The Deceased Wife's Sister."—41 Canada Law Journal, 345.

"Abatement of Smoke Nuisance in Large Cities by Legislative Declaration that Discharge of Dense Smoke is a Nuisance *per se*."—60 Central Law Journal, 343.

"The Philippine Penal Code."—13 American Lawyer, 147.

"The Anarchy of our Divorce Laws."—13 American Lawyer, 149.

"Foreign Corporations and the Statute of Limitations."—9 Law Notes, 25.

"Treasure Trove."—9 Law Notes, 28.

"Confessions as Evidence."—69 Justice of the Peace, 182.

"The Power of a State to Forbid the Traffic in, or the Possession of, Wild Game and Fish when Brought in from Another State or Country as Affecting Interstate Commerce."—60 Central Law Journal, 324.

"Nullius Filius: 'The Stranger in Blood.'"—30 Law Magazine and Review, 257.

"Notice of Suspension of Payment in Bankruptcy."—30 Law Magazine and Review, 270.

"Musical Instruments and the Copyright Law of Italy."—30 Law Magazine and Review, 286.

"The Burden of Proof in Cases of Marine Disaster."—39 American Law Review, 178.

"Federal Control of Insurance."—39 American Law Review, 182.

"The Proper Scope of Scientific (So-called Expert) Testimony in Trials Involving Pharmacologic Questions."—39 American Law Review, 187.

"The Street Railway Litigation of Chicago."—39 American Law Review, 244.

"The Difference between an Action for a Rescission and One upon a Rescission."—60 Central Law Journal, 384.

"Legacies to Servants."—41 Canada Law Journal, 425.

"Excessive Damages."—41 Canada Law Journal, 433.

"The Law of Bank Checks—Practical Series."—22 Banking Law Journal, 303.

"What Limitations are There upon the Power of the State to Prescribe or Limit the Rates Charged by Railroads and Similar Quasi Public Corporations?"—13 American Lawyer, 195.

"The Influence of the Bar in the Selection of Judges throughout the United States."—13 American Lawyer, 199.

"Right of a Third Party under a Contract Inter Alios."—4 Canadian Law Review, 364.

The Humorous Side.

A NAKED TRESPASSER.—A recent decision holds very explicitly that the engineer of a train has no duty to look out for "a naked trespasser" on the track.

THE RIGHT BOWER OF THE PROFESSION.—Some time in the forties, and before the election of Taylor and Fillmore to the Presidency and Vice Presidency, Mr. Fillmore was senior member of the law firm of Fillmore, Hall, & Havens, of Buffalo, N. Y. The firm was well known all over the state on account of the ability of its members. A young man of the Buffalo Bar had brought an action in the supreme court, and the defendant had retained the firm named. At the opening of the trial of the case the plaintiff's attorney stated to the jury that he would have to depend entirely upon the justice of his client's case, as the defendant had sought and obtained the aid and counsel of one of the ablest firms of lawyers in Western New York, and he might say he had opposed to him the right bower of the legal profession. "What does he mean by that?" said Mr. Fillmore. Mr. Havens—who, like Jerrold and Lamb, would rather lose his best friend than his joke—replied, "He means you." "Yes, I know," replied Mr. Fillmore, "but what does he mean by that particular expression?" "Did you never play euchre?" said Havens. "No," said Mr. Fillmore. "Well," said Havens, "in the game of euchre the right bower is the biggest knave in the pack."

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Mr. Bowlby's work in chapters I to XX aims to give exactly what the courts have decided on the subject, regardless of the well-known tendency of physicians and courts to a divergence of views.

Dr. Lloyd, in chapters XXI to LIX, which has been entirely re-written, treats the subject independently, from the standpoint of the scientific expert, as distinguished from that of the courts.

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This volume was written by Dr. Robert Amory, a noted authority on the physiological action of drugs, sometime president of the Massachusetts Medico-Legal Society, and who also assisted in writing this section of the work in the fourth edition, published twenty years ago, and Dr. Robert L. Emerson, instructor in physiological chemistry at Harvard.

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The result of the investigation of noted specialists, for example, Dr. F. M. Spalding, of Boston, chapter on wood alcohol, and Dr. Wiley's experiments with adulterated food products are among the many interesting features of this book.

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